



August 29, 2022

Washington State Department of Transportation
999 3rd Ave, Suite 2200
Seattle, WA 98104

Serial Letter No. W17068-219

Attn: Dave Becher
Project: SR 520 Montlake to Lake Washington I/C and Bridge Replacement Project
Contract: No. 009015
RE: Response to Letters LTR-MLG0319 and LTR-MLG0320

Dear Mr. Becher:

Graham is writing to respond to WSDOT's letters LTR-MLG0319 and LTR-MLG0320, both dated August 5, 2022.

First, Graham has been disadvantaged by the delay in receiving this information from WSDOT. This August 5, 2022 correspondence answers questions that Graham asked in its March 7, 2022 letter. Graham asked these questions in the midst of the strike but WSDOT did not respond until four months after the strike had ended. Moreover, these Graham questions were answered by Intelligent Partnerships in a letter dated May 2, 2022, but this information was not relayed to Graham for three months. For example, Graham asked WSDOT on March 7, 2022, whether it could explore non-union mitigation options without violating the CWA. Graham needed an answer immediately so it could begin mitigating while the strike was ongoing.

Graham will be prepared to further discuss concerns from this Intelligent Partnerships correspondence during the September 19, 2022, meeting between counsel for WSDOT and Graham.

Second, Graham disagrees that the CWA provides an exclusive remedy for its claim. As WSDOT is aware, the sole remedy provided under the CWA is liquidated damages payable to WSDOT. There is no available remedy under the CWA for Graham to seek compensation or a time extension. If Graham were truly limited to the remedies under the CWA, such a provision would be void and unenforceable under Washington law. (*See* RCW 4.24.360) ("Any clause in a construction contract . . . which purports to waive, release, or extinguish the rights of a contractor, subcontractor, or supplier to damages or an equitable adjustment arising out of unreasonable delay in performance which delay is caused by the acts or omissions of the contractee or persons acting for the contractee is against public policy and is void and unenforceable."). Furthermore, the CWA itself states that "nothing in this CWA shall modify, amend, or supersede any of the provisions set forth within the Contract between WSDOT and the selected Contractor..." CWA, § 1.1. Graham's remedies for its delay and impact claims are identified under the contract Graham executed with WSDOT. Therefore, Graham takes exception to any claim by WSDOT that Graham's protest is "invalid."



Moreover, WSDOT does not explain why WSDOT chose not to enforce the CWA itself to relieve the project of the strike.

Graham looks forward to the opportunity for its counsel to meet with WSDOT's counsel on September 19th to discuss these issues. Graham's counsel will be prepared to discuss its position in detail at that time. In the meantime, please do not hesitate to reach out with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bryant Helvey". The signature is fluid and cursive, with a large initial "B" and "H".

Bryant Helvey
Deputy Project Manager
Graham Contracting